

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:20CR26-4
2:20CR35
(Judge Kleeh)

JOSHUA AARON ROY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 36 and 130],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On December 18, 2020, the Defendant, Joshua Aaron Roy ("Roy"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count Seven of the Indictment in Criminal Action No. 2:20CR26-4, charging him with Possession with Intent to Distribute at Least Forty Grams of Fentanyl-Aiding and Abetting, in violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(vi), and Count One of the Indictment in Criminal Action No. 2:20CR35, charging him with Unlawful Possession of a Firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2). This Court referred Roy's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly

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and voluntarily entered, and recommending to this Court whether the plea should be accepted. Roy stated that he understood that the magistrate judge is not a United States District Judge, and Roy consented to pleading before the magistrate judge.

Based upon Roy's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Roy was competent to enter a plea, that the plea was freely and voluntarily given, that Roy was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 36 in Criminal Action No. 2:20cr35 and Dkt. No. 130 in Criminal Action No. 2:20cr26-4] finding a factual basis for the plea and recommending that this Court accept Roy's plea of guilty to Count Seven of the Indictment in Criminal Action No. 2:20cr26-4 and Count One of the Indictment in Criminal Action No. 2:20cr35.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file

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objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Roy nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&Rs [Dkt. No. 36 in Criminal Action No. 2:20cr35 and Dkt. No. 130 in Criminal Action No. 2:20cr26-4], provisionally **ACCEPTS** Roy's guilty plea, and **ADJUDGES** him **GUILTY** of the crimes charged in Count Seven of the Indictment in Criminal Action No. 2:20cr26-4 and Count One of the Indictment in Criminal Action No. 2:20cr35.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Roy, and prepare a presentence investigation report for the Court;

2. The Government and Roy shall each provide their narrative descriptions of the offense to the Probation Officer by **January 22, 2021**;

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3. The presentence investigation report shall be disclosed to Roy, his counsel, and the Government on or before **March 23, 2021**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **April 6, 2021**;

5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **April 20, 2021**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **April 27, 2021**.

The magistrate judge remanded Defendant to the custody of the United States Marshals Service.

The Court will conduct the **Sentencing Hearing** for Roy on **May 24, 2021**, at **1:00 p.m.**, at the **Elkins, West Virginia** point of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the

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Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: January 8, 2021.

/s/ Thomas S. Kleeh

THOMAS S. KLEEH

UNITED STATES DISTRICT JUDGE